



The Attorney General of Texas

July 12, 1978

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Mr. Robert C. Elder, Jr.
Smith, Smith, Dunlap and Canterbury
4050 1st National Bank Building
Dallas, Texas 75202

Open Records Decision No. 197

Re: Whether test scores of teachers as a group, not as individuals, are public under Open Records Act.

Dear Mr. Elder:

On behalf of the Dallas Independent School District, you request our decision under section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act. The district has received requests for the test scores on the Wesman Personnel Classification Test taken by approximately 500 new teachers. The requests include any reports, compilations, or analyses of the test results, and any charts, graphs, percentile rankings, or measurements prepared which illustrate the performance of the teachers on the test. The requests are not for the scores made by identifiable individuals. It is undisputed that the district holds the information requested. The district contends that the information is excepted from required public disclosure under the exceptions provided in sections 3(a)(1), 3(a)(2), 3(a)(6), and 3(a)(11).

The Open Records Act makes all information collected, assembled, or maintained by a governmental body in connection with the transaction of official business public information unless it is within a specified exception. Sec. 3(a). The burden is on the governmental body to establish that an exception applies. The governmental body must determine and demonstrate the applicability of a claimed exception in accordance with the procedures set out in section 7 of the Act. See Attorney General Opinions H-436, H-249 (1974); H-90 (1973); Open Records Decision Nos. 150 (1977); 125 (1976); 91 (1975).

Section 7(b) provides in part that: "The specific information requested shall be supplied to the attorney general but shall not be disclosed until a final determination has been made." We have repeatedly requested that you comply with this express requirement to supply the information at issue, but you have refused to do so. It is our view that the refusal to supply the specific information requested constitutes a failure to comply with the

requirements of section 7, and that this gives rise to the presumption that the information requested is public. See Open Records Decision Nos. 195 (1978); 150 (1977).

Based upon the description of the information by the requesting parties and your response, the type of information requested is apparently very similar to types which we have previously held to be public. In Attorney General Opinion H-483 (1974), we said that the Basic Science examination scores made by students of a specific school of the healing arts is public information. In Attorney General Opinion H-242 (1974), we said that the licensing examination grades of licensee's of the State Board of Vocational Nurse Examiners are public. We have held that an engineer's licensing examination scores are public. Open Records Decision No. 157 (1977). We have held that section 3(a)(2) does not except from required public disclosure the individual examination scores of persons taking civil service entrance and promotional examinations, Open Records Decision No. 154 (1977); that an employee's educational background and prior work experience is public, Open Records Decision Nos. 165 (1977); 67 (1975); that anonymous student evaluations of specific faculty members are public, Open Records Decision No. 167 (1977); and that achievement test scores of students by grade, school, and district are public, Open Records Decision No. 132 (1976).

While we believe that these previous determinations make it clear that the type of information requested, examination scores of employees as a group, is public and required to be disclosed, we additionally note that you have failed to supply us with sufficient information to demonstrate the applicability of any of the four exceptions claimed. In fact, prior decisions indicate that the exceptions would not apply.

The district contends that the information requested is excepted from required public disclosure under section 3(a)(1) which excepts "information deemed confidential by law, either constitutional, statutory, or by judicial decision." No constitutional or statutory provision or judicial decision has been cited to support the assertion that the exception established by section 3(a)(1) applies to information showing the results of a test administered to teachers as a class or group, and we know of no law which would make this information confidential.

The district contends that the information requested is excepted from required public disclosure under section 3(a)(2), which excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ." The 3(a)(2) exception is applicable only to information which relates to an identifiable employee. See Open Records Decision No. 132 (1976) (student records exception: "does not apply to information which is not personally identifiable to an individual student"). The requests here are limited to information which does not identify any individual.

The district contends that the information is excepted under section 3(a)(6) which excepts "drafts and working papers involved in the preparation of proposed legislation." This exception was not intended to except basic factual information from public disclosure. Open Records Decision No. 140 (1976). Even if section 3(a)(6) can apply to a school board, there is no indication how this information constitutes a draft or working paper involved in the preparation of proposed legislation.

The district contends that the information is excepted under section 3(a)(11) which was designed to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussions between subordinate and chief concerning administrative action. Attorney General Opinion H-436 (1974). The exception does not extend to factual information. Id.; see Environmental Protection Agency v. Mink, 410 U.S. 73 (1973). We have frequently applied the opinion-fact distinction to require disclosure of purely factual information. Open Records Decision Nos. 178, 171, 168, 160 (1977); 149, 128 (1976); 86, 81, 80 (1975); 29, 20 (1974). The district contends that the information requested is an integral part of a research project designed to determine the validity of these tests as a measure of teacher competence. It contends that the test scores have no meaning standing alone and are likely to be misinterpreted by the general public. The argument is that the raw data are only one part of the entire evaluative process and should not be disclosed until the entire process is completed. A similar argument was expressly rejected under the federal Freedom of Information Act in Vaughn v. Rosen, 523 F.2d 1136 (D.C. Cir. 1975). See also Attorney General Opinion H-483 (1974); Open Records Decision No. 48 (1974).

In summary, it is our decision that the information requested is not excepted under sections 3(a)(1), 3(a)(2), 3(a)(6), or 3(a)(11), and that the information is public information which is required to be disclosed.

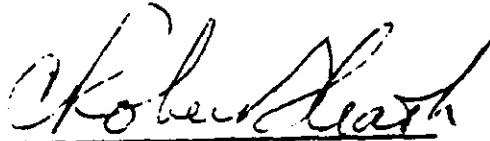
Very truly yours,


JOHN L. HILL

Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant

A handwritten signature in cursive script, appearing to read "C. Robert Heath".

C. ROBERT HEATH, Chairman
Opinion Committee

jsn